

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Concerning Energy  
Efficiency Rolling Portfolios, Policies, Programs,  
Evaluation, and Related Issues.

Rulemaking 13-11-005  
(Filed November 14, 2013)

**COMMENTS OF MARIN CLEAN ENERGY ON PHASE II WORKSHOP 3**

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Pursuant to the directions set forth in the *Administrative Law Judge's Ruling RE Comments on Phase II Workshop 3* ("Ruling") issued on April 1, 2015, Marin Clean Energy ("MCE") respectfully submits the following comments on the Phase II Workshop 3. MCE follows the order of questions presented in the Ruling, preserves the general question numbering, and omits questions where no comment is provided.

MCE supports reevaluating the appropriate roles for statewide and third party programs. It is important to provide clarity to the structure of energy efficiency ("EE") programs such that all program administrators ("PAs") and implementers are accurately identified. Coordination among PAs and implementers should be encouraged and details of this coordination should be made available in PAs' filings. Local government PAs should be granted a right of first refusal to serve their constituents with EE programs to avoid overlapping EE programs within PA service territories. There are a number of programs or components of programs that are appropriate for third party administration or a statewide approach. However, the Commission should exercise caution to avoid relying solely on third parties or statewide approaches.

## **I. STATEWIDE ENERGY EFFICIENCY PROGRAMS**

### **A. Current Implementation Approach of IOU Statewide Programs**

1. On the supply side, utility-owned generation projects have been required to compete “head-to-head” with independent power producer bids in RFOs. Could/should that same approach be taken in energy efficiency portfolios?

Allowing a diversity of Program Administrators (“PAs”) or implementers to bid for administering energy efficiency (“EE”) programs or implementation services may be appropriate in specific contexts.

Demand side management bidding programs, such as standard offer programs, can offer administrative efficiencies and can capture significant savings at a lower cost. However, these programs would be best suited to sectors that are not at risk for stranded assets. For example, EE programs for industrial customers may be appropriate for competitive bidding. Independent entities can specialize in the technical knowledge necessary to cater programs to each industrial customer. Industrial EE projects may also provide sufficient profit motives to encourage a robust pool of bids due to the potential for large energy savings with low transaction costs relative to other market sectors. While specific market segments may be appropriate for competitive bidding, this approach should not be applied universally.

There are concerns with relying on competitive bidding for all EE programs or implementation services. Hard to reach populations are likely to be excluded from or deemphasized in bids because the transaction costs to achieve savings are high relative to other populations. The evaluation criteria for selecting bids may also produce unintended consequences. If cost-effectiveness is the primary evaluation metric, independent bidders may simply maximize cost-effectiveness and sacrifice deep savings. They may focus on a single measure or only the low-hanging fruit and not realize the full potential from a customer’s

participation. These concerns should be addressed in any system that relies on competitive bidding for program administration or implementation services.

2. Are statewide programs designed to support efficiency measure pathways to code adoption in coordination with the IOUs' Codes and Standards advocacy?
  - a. If not, should they be?

Code enforcement programs administered by the IOUs do not adequately address the barriers faced by permitting and enforcement offices. These programs do provide training to local permit offices to better understand applicable codes. However, the local permit offices are primarily constrained due to lack of personnel resources. Those offices understandably prioritize health and safety code compliance over energy code compliance. The existing enforcement programs should do more than provide education; they should identify and address personnel resource constraints. Local governments, as the entities in the position of enforcing code compliance, should be able to apply for energy code enforcement programs to guide resources to where they would be most helpful in increasing the rates of code compliance.

MCE has received anecdotal reports that payback periods can be substantially similar when comparing projects with rebates and code compliance to projects without rebates or compliance. In order to incentivize customers to achieve code compliance, rebates need to be sufficient to effect a relatively shorter payback period. This may be achieved with an adder for demonstrated permit and code compliance.

- b. Does the business plan concept proposed by the joint stakeholders incorporate a "pathway to code" concept?

It is unclear whether the current form of the business plan concept contemplates a "pathway to code." A clear pathway to code should be incorporated into the final rolling

portfolio process. One means to achieve this is a required element that describes code compliance partnerships between PAs and the local governments in their service territories.

**B. Should We Standardize Current Statewide Programs?**

1. Should we standardize current statewide programs across Program Administrators (PAs)?

Standardization of statewide programs across PAs should be limited to components that are not susceptible to regional differences or are best achieved at scale. For example, statewide program policies and governing regulations, like contractor requirements, may be standardized. However, many programs benefit from an understanding of local market conditions such as the availability of a qualified local workforce. Administration at the local level may also allow for developing new best practices.

2. What kinds of programs lend themselves to statewide leadership on design and implementation?
3. Would it make sense to develop mid-stream and upstream programs at the statewide level to more fully leverage the state's buying power with manufacturers and/or retailers, rather than have each utility develop separate mid-stream and upstream programs?

While standardization of statewide programs administered by multiple PAs should be limited to specific components of those programs, there are certain types of programs that may be appropriate for a single, statewide administrator. One example is codes and standards ("C&S") advocacy. This relates only to advocating for more stringent statewide codes and standards for EE (*e.g.* Title 24) and excludes work to strengthen C&S enforcement through education and support for local governments or advocacy work on local codes and standards (*e.g.* the City of Berkeley's Residential Energy Conservation Ordinance). A single entity could be

tasked with advocating for more stringent statewide C&S because those standards are consistent across the state.

The current savings attributed to IOUs for codes and standards advocacy is justified as a means to ensure IOU EE PAs do not advocate for lower standards simply to make their programs appear more cost-effective. However, IOUs are no longer the only PAs and the same justification should be extended to attribute savings to each PA participating in C&S advocacy. The potential rise in the number of EE PAs means the savings and associated expense of ratepayer dollars for C&S advocacy may greatly increase in size and complexity. With an increasing number of PAs receiving compensation for C&S advocacy, the justification for attributing savings gives way to the need for reasonable use of ratepayer funds. The Commission should consider cleaving off statewide C&S advocacy for a single statewide administrator.

Upstream and mid-stream programs should be developed and administered at the statewide level. Relying on the state's buying power, or concentrating the buying power for upstream and mid-stream programs into a single administrator will bring down the price of related EE measures. Additionally, a single PA would reduce the transaction costs to coordinate with statewide retailers. These efficiencies justify establishing a statewide PA to design and administer upstream and mid-stream programs.

The Commission should also allow local or regional PAs to propose and administer local or regional mid-stream programs. Local or regional mid-stream programs are appropriate when a specific EE technology has tremendous potential on a regional basis (*e.g.* heat pumps). Additionally, a great number of retailers in the state do not have a statewide footprint; many retailers are completely encompassed within a single PA's service territory. A retailer with a statewide footprint may maintain regionally-specific inventories or may not want to stock a new

EE product in locations throughout the state. Local or regional PAs should be able to propose mid-stream programs to take advantage of these regional opportunities. While statewide mid-stream programs have tremendous potential, there should be a clear path for local and regional PAs to propose smaller scale programs specific to their service territories.

Another program appropriate for statewide standardization and administration is contractor certification. The state currently administers a licensing system for contractors that includes background checks. PAs may have their own certification programs with redundant or superfluous measures including additional background checks and requirements the state does not impose. These certifications impose a burden on contractors and may impose a barrier to relocating to another PAs service territory with more stringent requirements. These certifications are not consistent across the state and may not be necessary. The Commission should confine the certification of contractors to a statewide standard that may be limited to the licensing requirements.

As discussed above, statewide demand side management bidding programs can offer efficiencies. Standard offer programs can achieve large savings with relatively low administrative burden or transaction cost. They may also enable diverse market actors and create pathways for innovative practices and programs. However, these programs are best suited to sectors that are not at risk for stranded assets. Competitively bid programs involve a siloed focus that is bounded by the terms of the governing contract. Sectors that are suitable for robust dynamic programs are not appropriate for statewide design and competitive bidding.

4. Can/should we simultaneously have regional variations for similar programs (e.g., commercial lighting) *and* have an overlapping single statewide program for the benefit of those with a statewide footprint?

As discussed above in the context of C&S or upstream and mid-stream programs, MCE supports the existence of statewide programs with overlapping regional or local programs. There



are specific areas where such overlapping programs may be appropriate. However, it is important to note that clear delineation and coordination are necessary to ensure efficient and equitable administration of programs.

PAs with overlapping service territories should have clearly defined roles and geographic scopes to avoid duplicative program offerings. As an example of defining roles, a statewide upstream program should not simultaneously exist with a regional upstream program focused on the same product. In this case, the statewide program with greater buying power should simply coordinate with the regional PA to ensure the PA's needs are met through the statewide program. While defined roles and coordination are necessary, they are not sufficient to resolve all issues with overlapping service territories.

The challenge of defining the geographic scope arises when multiple PAs offer the same program in the same area. This challenge exists today between local government partnerships ("LGPs") and third party programs. The solution used in many regions today allows LGPs to have the "right of first refusal" to serve customers within their service territory. For example, hotels are a sector that may be served by either the "Lodging Savers" Third Party Program or by the Local Government Partnership Small Commercial programs. In the County of Marin, the Marin County Energy Watch Partnership is given the choice of either serving these hotel customers or ceding them to the third party program. Clearly defining the scope of programs for PAs with overlapping service territories will address concerns about duplicative administration. This right of first refusal should be mapped over all PAs to ensure local government PAs with service territories that overlap with an IOU have the first option to serve their constituents.

MCE is experiencing challenges with overlapping geographic service territories today. MCE's service territory overlaps with Pacific Gas and Electric Company ("PG&E"). PG&E

customer account representatives are paid with ratepayer funds and earn a commission, in part, based on the number of kWh savings they can refer to existing PG&E programs. This payment structure has created an incentive for these account representatives to sell only those programs that attribute savings to the PG&E portfolio, rather than to refer to the program that offers the greatest benefit to the customer.

MCE does not believe that this challenge can be overcome through parity in the commission structure.<sup>1</sup> The most elegant solution to this challenge is to establish the right of first refusal for all local government PAs. If the account representative, or anyone for that matter, can only refer a customer to a single program serving a geographic area, the challenges of overlapping programs are resolved. MCE recommends a hierarchy that allows local governments, CCAs, and any local or regional PAs within an IOU service territory to assert a right to administer programs in their service territory and displace the IOU and IOU-contracted third party implementers. This hierarchy allows communities to rely on IOU programs if they do not wish to administer their own and empowers them to design their own locally-tailored programs.

5. Would the proposed business plan approach envisioned by the joint stakeholders' proposal lend itself to a more standardized statewide approach? If so, how? If not, why not?

At this point MCE is not aware of any aspect of the business plan approach that expressly attempts to standardize statewide approaches. However, the business plan approach is intended to include a description of the coordination between PAs on regional and statewide programs.

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<sup>1</sup> An account representative may encounter several factors that contribute to a desire to refer customers to a PG&E program over another PA's program. These include pressure from management to maximize savings attributed to PG&E, familiarity with PG&E's programs, and ease of referral through explaining only one program. These factors are not exhaustive and are challenging to address independently or manage on an ongoing basis.

MCE supports including descriptive elements related to coordination. These elements should describe the roles of each PA and how overlapping jurisdiction between programs will be coordinated, and may be useful for the Commission to determine whether specific programs could be standardized on a statewide basis.

**C. Should We Replace Some Statewide Approaches with Regional Approaches?**

1. Are there particular “statewide” programs that we should re-label as regional or local?
2. If so, which programs and why?

A number of statewide programs should be re-labeled as regional or local. LGPs and code enforcement programs should be labeled as local programs because their reach is local and they will vary greatly depending on the characteristics and priorities of the locality they serve. Home Upgrade and Zero-Net Energy programs should also be labeled local because the measures and strategies will vary dramatically based on the climate and resources available (e.g. heat pumps may be more successful in hot climate zones where they are more cost-effective). These programs should be labeled regional because the climate and resources available will vary dramatically across an IOU’s service territory.

Workforce Education and Training (“WE&T”) should consist of a combination of statewide and regional or local programs. The statewide training efforts (e.g. Title 24) should be complimented by local or regional training programs that address the local C&S, local market readiness, and local climates.

**D. Should We Modify the Mechanics of Statewide Program Administration?**

1. Do the portfolios have too many programs? If so, how could we modify the statewide PA mechanics help to reduce them?

IOU PAs have too many programs. This creates customer confusion and makes it difficult for evaluators to gain a comprehensive understanding of their portfolios. The proposed business plan approach should reduce the number of programs into consolidated sector-level or subsector-level programs. MCE supports this consolidation and provides two recommendations to further address portfolio complexity. First, MCE recommends using AMI data to stratify users into high, mid, and low consumers of energy. Portfolios could incorporate suites of strategies to address each of these strata instead of developing a comprehensive set of strategies that may be applied to all customers. Second, MCE recommends adoption of performance incentives as a substitute for the measure by measure approach. The incentives could be structured to reward energy savings accomplished through whatever measures the PA or customer elects. AMI data could contribute significantly towards quantifying site specific savings estimates in a performance based program.

2. Should we move to a third-party administrator for some statewide program(s); if so which one(s)?

MCE provides a partial response to this question under the consolidated comments to questions 1.B.2 and 1.B.3 above. However, MCE also cautions against relying heavily on third parties and especially on competitive bidding for EE programs. Relying exclusively on third parties may be appropriate in some defined, technology specific markets with a workforce that has very specialized training. However, it may also result in lost opportunities for savings. Competitive third party programs may simply focus on a single measure or only attempt to capture the most cost-effective energy savings (*i.e.* the low hanging fruit). The focus on shallow cost-effective savings is a rational choice for private third party entities. This dynamic provides additional support for applying the right of first refusal for local governments described above; a

CCA should be able to administer its own program that offers a more comprehensive set of solutions than the statewide third party administrator.

MCE also proposes here that a third-party administrator be selected to run a statewide data coordination program (“Statewide Data Program”) to serve all PAs. This program will collect usage and participation data and coordinate the provision of that data with each PA. Each PA will report customer participation to the Statewide Data Program and will be eligible to use the program to determine past participation. The program will also collect AMI data for potential use in verification of savings and to support integrated demand-side programs. The program can develop privacy protections including confidentiality and use agreements related to the shared data. The Commission could impose enforceable regulations to create an additional layer of privacy protection. This statewide program will support an EE landscape with a large number of diverse PAs with overlapping service territories and will be useful if EE is integrated with other demand-side resources. It will also provide a single resource for the Commission to identify and monitor EE related efforts. To build upon existing CPUC efforts in providing greater access to data, this entity could be housed in a state research institution such as on a University of California campus or within the California Energy Commission.

## **II. THIRD-PARTY ENERGY EFFICIENCY PROGRAMS**

### **A. How Do IOUs Configure and Solicit 3P Programs to Meet Policy Objectives?**

1. What distinguishes a “Third Party Program” from other forms of non-IOU implementation? Is this distinction worth maintaining?
2. How do IOUs decide what programs to pursue via “Third Party Program” solicitations versus via their statewide programs?
3. What is the process for and likelihood of “Third Party Programs” that are not successful or that have run their course being terminated, or on the other hand, of scaling up and “graduating” to becoming statewide programs?

The fundamental and critical distinction is between a PA and an implementer. A third party may fill either role depending on the activities they are undertaking. The distinction between a PA and an implementer is worth maintaining to provide a structure and accountability for overseeing and managing the various ratepayer funded EE activities throughout the state. A PA is responsible to the Commission for the ultimate design of a program and for achieving the program's goals. PAs include IOUs, RENs, CCAs, and statewide third party PAs<sup>2</sup> that are independently accountable to the Commission. An implementer provides services under contract with a PA to support the PA's program. An implementer is not responsible to the Commission for achieving the program's goals. An implementer may perform similar functions to a PA, as is the case with some of the IOU third party implementers, but is ultimately responsible to the PA and not the Commission.

The Commission has relied on IOUs to oversee third party implementers. However, the Commission should not rely on the IOUs to perform oversight or act as the contract manager for statewide third party PAs. Leaving IOUs in a management role over statewide third party PAs may unnecessarily compensate IOUs for the work conducted independently by statewide third party PAs. If statewide third party PAs are responsible for the design and ultimately for achieving the goals of their programs, they should be separate from IOUs and should be directly managed by the Commission.

MCE recommends maintaining the PAs' oversight role over implementers with opportunities for coordination. Each implementer should report to the PA for which they provide services. The PA should remain responsible for the goals of their program and for ensuring the implementers are providing services in furtherance of those goals. If an implementer's footprint

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<sup>2</sup> These may include statewide C&S advocacy, the Statewide Data Program suggested in these comments, and any other statewide program that is administered by a single entity.

extends into multiple PAs' service territories, each PA should have the ability to coordinate services with that implementer. The PAs may develop a memorandum of understanding that describes this coordination. At minimum, the coordination should be described in the PA's business plan or implementation plan and be reported on in the annual reports.

4. To what extent are Third-Party Program bidders able to propose their own program designs?
5. How much latitude is there for Third-Party Program bidders to propose:
  - a. target market sector or segment?
  - b. geographic scope of coverage? (within a utility service area, or to serve multiple service areas); and,
  - c. set of end uses or measures to be included or permitted?

Third party bidders may have great flexibility in proposing their own program designs. The concerns about a third party sweeping the low hanging fruit persist and may be addressed through bidding criteria or other forms of Commission oversight.

## **B. Changes to Third Party Approaches**

2. Should co-pays be required for direct install programs; if so, why?

Co-pay requirements should depend on the technology and program policies. Co-pays can provide an incentive or "hook" to encourage adoption of additional measures (e.g. buy two measures to get a third measure for free). On the other hand, eliminating the co-pay can help increase adoption of unfamiliar emerging technologies. The Commission should avoid incentivizing customers to adopt only the most cost-effective measures through simplistic or standardized co-pay options.

5. What process(es) could be adopted to ensure program designs and implementation procedures or practices take full advantage of identifying opportunities for improvements and higher performance outcomes

The Commission should institute several processes to improve the current programs. The Commission should ensure a clear structure of the actors delivering EE services. This structure

should include PAs and implementers. PAs are responsible to the Commission for meeting EE goals. Implementers are not responsible to the Commission for meeting goals, but do deliver EE services under an agreement with a PA. The Commission should also establish the right of first refusal for local government PAs. Establishing this structure will clarify the roles, especially for third parties, and enable better coordination among multiple PAs and implementers.

The Commission should also include stakeholder participation and strategic data-driven program design. The Commission should ensure program designs are vetted with stakeholder groups, similar to what is recommended in the business plan approach. Program design should also take advantage of AMI data to stratify customers into usage groups or market segments. Strategies developed around usage patterns may greatly improve the administrative efficiency and overall success of EE programs.

7. How might statewide or regional/local programs integrate their resources and activities to support some of the strategies identified in the current CEC Existing Buildings EE Action Plan (AB 758), as discussed by Martha Brook of the CEC at the March 23 workshop? (see: <http://www.energy.ca.gov/ab758/documents/index.html>) E.g. coordination with building benchmarking activities, or using customer data to assist in targeting best prospects for EE adoption.

All PAs should integrate the CEC Draft Existing Building EE Action Plan's ("Action Plan") goals and strategies into their business plan. This may be done either through a discrete element or by weaving the goals and strategies throughout the business plan. For example, an implementer of a commercial program could utilize the proposed expansion of the non-residential building benchmarking program (strategy 1.2) to encourage customers to take action now.<sup>3</sup> The "Statewide Data Administrator" proposed above would support Action Plan strategy

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<sup>3</sup> "Draft California Existing Buildings Energy Efficiency Action Plan," p. 45 March, 2015. California Energy Commission.



2.1.<sup>4</sup> Establishing a clear first right of refusal policy for local government administrators and implementers could pave the way for greater participation and innovation in the local government sector, aligned with strategy 1.7 of the Action Plan.<sup>5</sup> It is worth noting that many of the strategies in the Action Plan are non-resource strategies and may reduce a PA's cost-effectiveness if they are integrated comprehensively. The Commission should attempt to harmonize the strategies in the Action Plan with the evaluation criteria used to assess cost-effectiveness.

8. Are there national utility or EE industry sources of program design best practices, and implementation benchmarks or best practices that should receive greater attention by PAs and implementers in California?

MCE suggests several sources of information to improve program design and implementation. One source is the California Technical Forum ("CalTF"). MCE provided comments on Phase II Workshop 1 explaining the value of the CalTF in the creation of transparent, vetted *ex ante* savings estimates. Another example is the Vermont Energy Efficiency Investment Corporation. This non-profit, non-IOU administers the statewide efficiency program in Vermont. Finally, MCE suggests referring to the Massachusetts Renewable Portfolio Standard. Massachusetts allows energy efficiency to contribute to meeting the standard and thus incorporates EE into the procurement strategy.

### **C. Possible Third Party Approach to Statewide Programs**

1. Should a single PA administer some statewide program(s) for the entire state; if so which one(s)?

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<sup>4</sup> *Ibid*, p. 58.

<sup>5</sup> *Ibid*, p. 55.

MCE finds that there can be benefit to statewide third party PAs applying to the Commission to provide specific statewide program components. For example, the Center for Sustainable Energy administers the statewide marketing education and outreach (“ME&O”) program for the entire state and has provided coordination across IOUs that is beneficial for marketing at a statewide level. Each PA should also administer a locally-tailored ME&O programs specific to their other EE programs.

3. Would some kind of “challenge” program be helpful, such as the long-ago “Golden Carrot” competition, or in more recent years an X- prize competition?

MCE supports inclusion of local or regional “challenge” programs. These programs should be identified in PAs’ business plans and should incorporate the use of AMI data.

### **III. CONCLUSION**

MCE thanks Assigned Commissioner Peterman and Administrative Law Judge Edmister for the opportunity to provide these comments on the Phase II Workshop 3.

Respectfully submitted,

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